ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1223 By: McCullough of the House

and

Sykes of the Senate

An Act relating to state government; enacting the Legal Services Reform Act; ***** prohibiting entities from hiring private attorneys unless certain procedures are met; removing excepted agencies; allowing entities to employ general ***** requiring Internet website to contain conspicuous statement; requiring agency to maintain list of persons and entities receiving requests for proposals; mandating agencies provide Internet website access to request for proposals; prescribing period of time to maintain access; ***** providing for reduction in fee; providing that act does not expand authority of state agency or state officer; providing for discretion in the request for proposal process; ***** providing for exemption; providing for codification; and providing an effective date.

AMENDMENT NO. 1. Page 11, line 4 1/2, insert a new subsection C to read

"C. The provisions of the Legal Services Reform Act shall not be applicable to the Oklahoma State Regents for Higher Education or to any institutions within the Oklahoma State System of Higher Education. The Oklahoma State Regents for Higher Education and the institutions within the Oklahoma State System of Higher Education shall file an annual report every October 15 with the Attorney

General's office stating the amounts spent during the previous fiscal year to retain private attorneys or law firms."

and amend the title to conform

Passed the Senate the 26th day of April, 2011.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2011.

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Presiding Officer of the House of Representatives

ENGROSSED HOUSE
BILL NO. 1223 By: McCullough of the House

and

Sykes of the Senate

An Act relating to state government; enacting the Legal Services Reform Act; amending 74 O.S. 2001, Section 18c, as last amended by Section 1, Chapter 55, O.S.L. 2010 (74 O.S. Supp. 2010, Section 18c), which relates to employment of attorneys; prohibiting entities from hiring private attorneys unless certain procedures are met; removing excepted agencies; allowing entities to employ general counsels and attorneys as provided by statute; amending 74 O.S. 2001, Section 20i, which relates to legal representation for agency or official; allowing Attorney General to use good cause to determine when private attorneys shall be retained; requiring request for proposal process for retention of certain legal services; requiring Internet website to contain conspicuous statement; requiring agency to maintain list of persons and entities receiving requests for proposals; mandating agencies provide Internet website access to request for proposals; prescribing period of time to maintain access; requiring website to contain certain information; imposing requirement with respect to documents accessible through website; requiring certain statement from retained outside counsel at conclusion of legal proceeding; providing maximum amount of fees and expenses to be incurred; providing for reduction in fee; providing that act does not expand authority of state agency or state officer; providing for discretion in the request for proposal process; amending 74 O.S. 2001, Section 85.3A, as last amended by Section 1, Chapter 66, O.S.L. 2010 (74 O.S. Supp. 2010, Section 85.3A), which relates to The Oklahoma Central Purchasing Act; providing for exemption; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Legal Services Reform Act".

SECTION 2. AMENDATORY 74 O.S. 2001, Section 18c, as last amended by Section 1, Chapter 55, O.S.L. 2010 (74 O.S. Supp. 2010, Section 18c), is amended to read as follows:

Section 18c. A. 1. Except as otherwise provided by this subsection, no state officer, board or commission shall have authority to ~~employ or appoint attorneys~~ retain a private attorney or law firm to advise or represent said officer, board or commission ~~in any matter~~, without following the procedures set forth in Section 4 of this act.

2. ~~The provisions of this subsection shall not apply to the Corporation Commission, the Council on Law Enforcement Education and Training, the Consumer Credit Commission, the Board of Managers of the State Insurance Fund, the Oklahoma Tax Commission, the Commissioners of the Land Office, the Oklahoma Public Welfare Commission also known as the Commission for Human Services, the State Board of Corrections, the Oklahoma Health Care Authority, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement~~

~~Commission, the Transportation Commission, the Oklahoma Energy Resources Board, the Department of Central Services, the Oklahoma Merit Protection Commission, the Office of Personnel Management, the Oklahoma Water Resources Board, the Department of Labor, the Department of Agriculture, Food, and Forestry, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Public Employees Retirement System, the Uniform Retirement System for Justices and Judges, the Oklahoma Conservation Commission, the Office of Juvenile Affairs, and the State Board of Pharmacy.~~

~~3. The provisions of paragraph 2 of this subsection shall not be construed to authorize the Office of Juvenile Affairs to employ any attorneys that are not specifically authorized by law.~~

~~4.~~ All the legal duties of such officer, board or commission shall devolve upon and are hereby vested in the Attorney General; provided that:

a. the Governor shall have authority to employ special counsel to protect the rights or interest of the state as provided in Section 6 of this title, and

b. liquidation agents of banks shall have the authority to employ local counsel, with the consent of the Bank Commissioner and the Attorney General and the approval of the district court.

B. At the request of any state officer, board or commission, ~~except the Corporation Commission, the Board of Managers of the CompSource Oklahoma, Oklahoma Tax Commission and the Commissioners of the Land Office, the Grand River Dam Authority, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Public Employees Retirement System, the Uniform Retirement System for Justices and Judges and the Interstate Oil and Gas Compact Commission,~~ the Attorney General shall defend any action in which they may be sued in their official capacity. At the request of any such state officer, board or commission, the Attorney General shall have authority to institute suits in the name of the State of Oklahoma on their relation, if after investigation the Attorney General is convinced there is sufficient legal merit to justify the action.

C. Any officer, board, or commission which has the authority to employ or appoint attorneys may request that the Attorney General defend any action arising pursuant to the provisions of the Governmental Tort Claims Act.

D. Nothing in this section shall be construed to repeal or affect the provisions of the statutes of this state pertaining to ~~attorneys and legal advisors of the several commissions and departments of state specified in subsection B of this section, and all acts and parts of acts pertaining thereto shall be and remain in~~

~~full force and effect~~ general counsels and other attorneys authorized to be employed by state agencies, officers, boards, and commissions.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 20i, is amended to read as follows:

Section 20i. A. An agency or official of the executive branch may obtain legal representation by one or more attorneys by means of one of the following:

1. Employing an attorney as such if otherwise authorized by law;

2. Contracting with the Office of the Attorney General; or

3. If the Attorney General is unable to represent the agency, ~~or official due to a conflict of interest, or the Office of the Attorney General is unable or lacks the personnel or expertise to provide the specific representation required by such agency or official,~~ for good cause to be determined solely at the discretion of the Attorney General, contracting with a private attorney or attorneys pursuant to this section and the procedures set forth in Section 4 of this act.

B. When entering into a contract for legal representation by one or more private attorneys, an agency or official of the executive branch shall select an attorney or attorneys from a list of attorneys maintained by the Attorney General. An agency may contract for legal representation with one or more attorneys who are

not on the list only when there is no attorney on the list capable of providing the specific representation and only with the approval of the Attorney General. The list shall include any attorney who desires to furnish services to an agency or official of the executive branch and who has filed a schedule of fees for services with and on a form approved by the Attorney General. An agency or official may agree to deviate from the schedule of fees only with the approval of the Attorney General.

C. Before entering into a contract for legal representation by one or more private attorneys, an agency or official of the executive branch shall furnish a copy of the proposed contract to the Attorney General and, if not fully described in the contract, notify the Attorney General of the following:

1. The nature and scope of the representation including, but not limited to, a description of any pending or anticipated litigation or of the transaction requiring representation;

2. The reason or reasons for not obtaining the representation from an attorney employed by the agency or official, if an attorney is employed by the agency or official;

3. The reason or reasons for not obtaining the representation from the Attorney General by contract;

4. The anticipated cost of the representation including the following:

a. the basis for or method of calculation of the fee including, when applicable, the hourly rate for each attorney, paralegal, legal assistant, or other person who will perform services under the contract, and

b. the basis for and method of calculation of any expenses which will be reimbursed by the agency or official under the contract; and

5. An estimate of the anticipated duration of the contract.

D. Before entering into a contract for legal representation by one or more private attorneys ~~where the agency has reason to believe that the case, transaction or matter will equal or exceed Twenty Thousand Dollars ($20,000.00) or after employment when it becomes apparent that the case, transaction or matter will equal or exceeds Twenty Thousand Dollars ($20,000.00),~~ an agency or official of the executive branch shall obtain the approval of the Attorney General ~~when the total cost, including fees and expenses, of all contracts relating to the same case, transaction, or matter will equal or exceed Twenty Thousand Dollars ($20,000.00)~~. Any amendment, modification, or extension of a contract which, had it been a part of the original contract would have required approval by the Attorney General, shall also require approval by the Attorney General.

E. When an agency or official of the executive branch enters into a contract for professional legal services pursuant to this

section, the agency shall also comply with the applicable provisions of Section 85.41 of Title 74 of the Oklahoma Statutes.

F. The provisions of this section shall not apply to the Oklahoma Indigent Defense System created pursuant to Section 1355 et seq. of Title 22 of the Oklahoma Statutes.

G. The Attorney General shall, on or before February 1 of each year, make a written report on legal representation obtained pursuant to paragraphs 2 and 3 of subsection A of this section. The report shall include a brief description of each contract, the circumstances necessitating each contract, and the amount paid or to be paid under each contract. The report shall be filed with the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chair of the Appropriations and Budget Committee of the House of Representatives, and the Chair of the Appropriations Committee of the Senate.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Any state agency or state officer that wishes to retain a lawyer or law firm to perform legal services on behalf of this state shall not do so until a request for proposal process has been undertaken.

B. The contracting agency shall cause an Internet website controlled by or on behalf of the agency to contain a conspicuous

statement, visible from the main webpage or equivalent segment of the website, that within one hundred twenty (120) days after the award of the contract for which the request for proposals was undertaken any person may obtain a copy of the request for proposal from the agency which prepared it and the identity of all persons or entities to whom the request for proposal was transmitted.

C. Each agency subject to the provisions of this section shall maintain a list of the persons and entities to whom a request for proposal has been transmitted, including the mailing address to which the proposal was mailed, and shall make such information available for inspection within one hundred twenty (120) days after the contract has been awarded.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20.3 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The request for proposal required by Section 4 of this act and all responses submitted to the request for proposals shall be made accessible through an Internet website maintained by or on behalf of the state agency within one hundred twenty (120) days after the contract has been awarded.

B. When the request for proposal has been made accessible on the Internet website, the information shall remain accessible through the website for a period of three (3) years after the contract has been awarded.

C. The identity of a vendor to whom or to which an agency has awarded a contract in response to a request for proposal, a brief description of the services to be performed under the contract, the projected total payments to be made under the contract, the actual payments made under the contract, once made, and the date the contract was awarded shall be accessible on the Internet website within one hundred twenty (120) days after the contract has been awarded and shall remain accessible on the Internet website for a period of three (3) years.

D. All information required to be accessible by the provisions of this section or any document that the agency makes accessible pursuant to Section 4 of this act shall be presented in a format which allows complete review of the content of such documents.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20.4 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. At the conclusion of any legal proceeding for which a state agency or state officer retained outside counsel on a contingency-fee basis, the state shall receive from counsel a statement of the hours worked on the case, expenses incurred, the aggregate fee amount, and a breakdown as to the hourly rate based on hours worked divided into fee recovered, less expenses.

B. In no case shall the state incur fees and expenses in excess of One Thousand Dollars ($1,000.00) per hour for legal services. In

cases in which a disclosure submitted in accordance with subsection A of this section indicates an hourly rate in excess of One Thousand Dollars ($1,000.00) per hour, the fee amount shall be reduced to an amount equivalent to One Thousand Dollars ($1,000.00) per hour.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 20.5 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Nothing in the Legal Services Reform Act shall be construed to expand the authority of any state agency or state officer to enter into contracts where no such authority previously existed.

B. Contracts entered into pursuant to the Legal Services Reform Act shall not be subject to The Oklahoma Central Purchasing Act, and the request for proposal process shall be subject to the discretion of the chief executive officer of the agency or a designee.

SECTION 8. AMENDATORY 74 O.S. 2001, Section 85.3A, as last amended by Section 1, Chapter 66, O.S.L. 2010 (74 O.S. Supp. 2010, Section 85.3A), is amended to read as follows:

Section 85.3A Compliance with the provisions of The Oklahoma Central Purchasing Act shall not be required of:

1. County government;

2. The Oklahoma State Regents for Higher Education, the institutions, centers, or other constituent agencies of The Oklahoma State System of Higher Education;

3. The telecommunications network known as OneNet;

4. The Department of Public Safety gun range;

5. The State Treasurer for the following purchases:

a. services, including, but not limited to, legal services to assist in the administration of the Uniform Unclaimed Property Act, as provided in Section 668 of Title 60 of the Oklahoma Statutes, and

b. software, hardware and associated services to assist in the administration of funds and securities held by the state, as provided in Section 71.2 of Title 62 of the Oklahoma Statutes;

6. CompSource Oklahoma if CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 3316 and 3317 of this title; ~~or~~

7. Contracts entered into pursuant to the Legal Services Reform Act; or

8. The Oklahoma Wheat Commission.

SECTION 9. This act shall become effective November 1, 2011.

Passed the House of Representatives the 17th day of March, 2011.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2011.

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Presiding Officer of the Senate